

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**FELIX BRIZUELA,**

**Plaintiff,**

**v.**

**CIVIL NO. 1:22-CV-104  
(KLEEH)**

**MON HEALTH MEDICAL CENTER,**

**Defendant.**

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**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 18] IN PART  
AND DISMISSING ACTION WITH PREJUDICE**

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On August 19, 2022, the pro se Plaintiff, Felix Brizuela, filed a Complaint against Mon Health Medical Center. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Alois (the "Magistrate Judge") for initial review. On December 12, 2022, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the action without prejudice for failure to state a claim. Plaintiff also filed an Amended Complaint [ECF No. 12]. Defendant moved to dismiss the Amended Complaint [ECF No. 15], and the Magistrate Judge held the motion in abeyance [ECF No. 19]. The Magistrate Judge entered a second R&R on December 30, 2022, recommending dismissal of the Amended Complaint [ECF No. 18].

The second R&R informed Plaintiff that he had fourteen (14) days from the date of service of the R&R to file "specific written

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objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned him that the "[f]ailure to timely file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Plaintiff received service of the second R&R on January 5, 2023. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because Plaintiff did not file objections, the Court is under no obligation to conduct a de novo review. Accordingly, the R&R was reviewed for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS IN PART** the second R&R [ECF No. 18]. Rather than dismissing without prejudice as recommended, the Court

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finds that the action shall be **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket. The motion to proceed in forma pauperis is **DENIED** [ECF No. 2]. The original R&R and the motion to dismiss are **DENIED AS MOOT** [ECF Nos. 13, 15].

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via email and the pro se Plaintiff via certified mail, return receipt requested.

DATED: June 13, 2023

*Tom S Klee*

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THOMAS S. KLEEH, CHIEF JUDGE  
NORTHERN DISTRICT OF WEST VIRGINIA